

TSBPME Case No. 07-201

**IN THE MATTER OF
SEAN M. O'MEARA, D.P.M.**

**MONITORING &
PROBATED SUSPENSION of**

LICENSE No. 1847

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**BEFORE THE TEXAS STATE
BOARD OF PODIATRIC
MEDICAL EXAMINERS**

SITTING IN AUSTIN,

TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below, came to be considered the allegations against Sean Matthew O'Meara, DPM. By letter dated August 28, 2007, the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. O'Meara of its intent to investigate complaints, concerns or reports filed against him. Dr. O'Meara was duly notified of the allegations against him. Dr. O'Meara has cooperated with the staff of the Board and was given the opportunity to present information in rebuttal.

By his signature on this Order, and upon acceptance and entry of this Order by the Board (to which the Board, at its September 8, 2007 regularly scheduled Board Meeting after reviewing this entire matter, granted by vote the pre-authorization of the Board President and Executive Director to execute this Order to be immediately effective upon their signature), Dr. O'Meara does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. O'Meara understands that he has the option, before signing this Agreed Order, to participate in a contested case hearing under the Administrative Procedure Act.

The Board and Dr. O'Meara, in order to avoid the expense, delay and uncertainty of a hearing, have agreed to the entry of an Order dispensing with the need for further action in this matter. Dr. O'Meara agrees to this Order for the purpose of resolving this proceeding only. The Board makes the following Findings of Fact and enters this Order:

FINDINGS OF FACT

1. Dr. O'Meara has completed the application and passed the examination for a license as a podiatric physician in the State of Texas. Therefore he is subject to the jurisdiction of the Board, the Podiatric Medical Practice Act of Texas and the Rules of the Board.
2. Review of Dr. O'Meara's application revealed potential concerns regarding his ability to practice podiatry with reasonable skill and safety due to events in the State of Montana, State of California, and with regard to the proper completion of license application materials and submission of statements before the California Board of Podiatric Medicine (California License No. EL-1691).

3. Dr. O'Meara was provided with notice of the Board's concerns and with an opportunity to respond to the concerns and to show compliance with the law. Dr. O'Meara appeared before the full Board at its September 8, 2007 regularly scheduled Board Meeting to address this matter and to answer questions. Upon questioning, Dr. O'Meara took full responsibility for his actions and misunderstanding of the licensing process in the State of California. Dr. O'Meara has been compliant with licensure terms set forth by the California Board of Podiatric Medicine and related entities. A motion was made to allow Dr. O'Meara to take the October 15, 2007 Jurisprudence Examination with an amendment to add an Agreed Order upon successful passage of the exam prior to licensure. Dr. O'Meara sat for and successfully passed the October 15, 2007 Jurisprudence Examination.
4. Dr. O'Meara, as an applicant to be a podiatrist licensed in the State of Texas, must comply with the provisions of the Podiatric Medical Practice Act of Texas, the Board Rules and Board Orders.

CONCLUSIONS OF LAW

1. Dr. O'Meara is required to follow the provisions of the Podiatric Medical Practice Act, Texas Occupations Code, §202.001, et. seq., and the associated Rules of the Board, 22 Tex. Administrative Code § 371.1, et. seq.
2. Texas Occupations Code, §202.253(a)(4) provides that, "the Board may refuse to issue a license to practice podiatry to a person, for engaging in grossly unprofessional or dishonorable conduct of a character that in the board's opinion is likely to deceive or defraud the public."
3. Texas Occupations Code, §202.253(a)(5) provides that, "the Board may refuse to issue a license to practice podiatry to a person, for directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice."
4. Texas Occupations Code, §202.253(a)(14) provides that, "the Board may refuse to issue a license to practice podiatry to a person, for willfully making in the application for a license to practice podiatry a material misrepresentation or material untrue statement."
5. Texas Occupations Code, §202.253(a)(15) provides that, "the Board may refuse to issue a license to practice podiatry to a person, for being unable to practice podiatry with reasonable skill and safety to a patient because of age, illness, drunkenness, or excessive use of drugs, narcotics, chemicals, or other substances or as a result of a mental or physical condition."
6. Texas Occupations Code, §202.501(a) provides that, "the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the Board."
7. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
8. 22 Texas Administrative Code, §376.3 provides in part that, "any podiatric

physician who violates any provision of these rules, or any provision of the Act shall be at the discretion of the Board subject to the following penalties: cancellation, suspension, revocation, or probated cancellation, revocation, or suspension of the license to practice podiatric medicine.”

9. Texas Occupations Code §53.022 provides that, “in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider: (1) the nature and seriousness of the crime; (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation; (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.”
10. The Findings Of Fact numbers 1 through 4 establish that Dr. O’Meara’s ability to safely practice podiatric medicine in the State of Texas is contingent upon him fully complying with the terms of this Agreed Order and compliance with the provisions of the Podiatric Medical Practice Act of Texas and the Board Rules.

ORDER

1. Dr. O’Meara is hereby granted a license to practice podiatric medicine (License No. 1847) subject to the following agreed terms.
2. Dr. O’Meara’s license is hereby Suspended for a term of three (3) years from the date of approval of this Agreed Order by the Board. The entire Suspension is Probated, conditioned upon the successful completion of the provisions set forth below.

During the 3-year Probated Suspension:

3. Dr. O’Meara agrees that practicing podiatric medicine without completing the entire terms of the order set forth by the California Board of Podiatric Medicine (License No. EL-1691) constitutes: A) a danger to the safety and the welfare of his patients, B) a failure to practice podiatric medicine in an acceptable manner consistent with the public health and welfare and C) the inability to practice with reasonable skill and safety. Upon completion, Dr. O’Meara shall present to the Board proof of his final compliance with the terms of the order set forth by the California Board of Podiatric Medicine.
4. Dr. O’Meara shall permit a Board representative or staff member to periodically enter his place of business and/or the facility at which he maintains an office, announced or unannounced, during the hours of 8:00 a.m. to 5:00 p.m. on any weekday that is not a federal holiday to ensure compliance with this Order, and to ensure proper medical records are maintained consistent with the proper practice of podiatric medicine.

5. Entry of this Order does not finally resolve any and all pending matters or investigations before the Board. The investigation into this matter remains ongoing until such time a notice is given by the Board affirming closure. The Board is not prohibited from continuing to investigate this matter nor is the Board prohibited from issuing further disciplinary action that is the subject of this investigation reportable to the National Practitioner Databank – Healthcare Integrity Protection Databank.
6. Failure to comply with the terms of this Agreed Order shall result in the automatic lifting of the probated nature of the suspension resulting in the immediate non-probated suspension of Dr. O'Meara's license under the authority of the Board's Investigative Committee to include revocation of license. The Board may seek judicial relief to enforce the terms of this Agreed Order.
7. If Dr. O'Meara fully complies with the terms of the **Agreed Order**, the Board agrees to consider his compliance with regard to bringing any further possible disciplinary action regarding the facts that are the subject of this Order, should the investigation warrant further Board action.
8. The terms of this **Agreed Order**, if accepted by the Board, become effective upon approval of the Board.

GENERAL PROVISIONS

1. Effective Date. This **Agreed Order** shall take effect and become binding upon the approval by the Board.
2. No Waiver. No waiver of any of the terms of this **Agreed Order** shall be valid unless in writing. No waiver of default of any terms of the **Agreed Order** shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
3. Governing Law & Venue. This **Agreed Order** is entered into pursuant to and shall be construed to be in accordance with the laws of the State of Texas including *Tex. Occup. Code Ann., §202.001 et. seq., the Podiatric Medical Practice Act., Tex. Occup. Code Ann., §53.021* and the *Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act*. Venue for any dispute related to this **Agreed Order** shall be in a court competent jurisdiction in Travis County, TX.
4. Acknowledgment of Entire Agreement. Dr. O'Meara acknowledges that he has carefully read this instrument, including all documents or exhibits, if any, that are referred to, that this instrument expresses the entire agreement between the parties concerning the subjects it purports to cover, and Dr. O'Meara has executed this instrument freely and of his own accord.
5. Notice. Any notice to be given under the terms of this **Agreed Order** by either

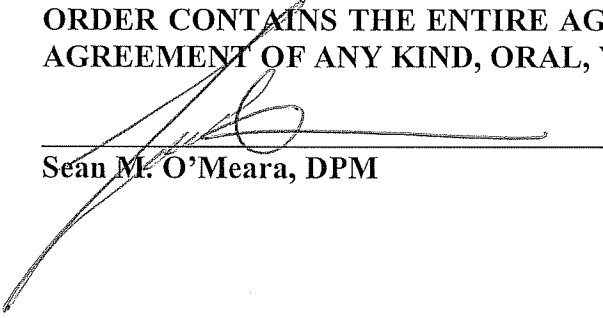
party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:

Sean Matthew O'Meara, DPM
3108 Via Grande
Sacramento, CA 95825

Texas State Board of Podiatric Medical Examiners
Investigations Division
P.O. Box 12216
Austin, TX 78711-2216

6. Upon approval of this **Agreed Order** by the Board, the Presiding Officer and the Executive Director are authorized to sign the **Order** on the Board's behalf.

I, SEAN MATTHEW O'MEARA, DPM, HAVE READ AND UNDERSTAND THE FOREGOING ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND TO JUDICIAL REVIEW OF THE AGREED ORDER. I SIGN IT VOLUNTARILY. I UNDERSTAND THE AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, ORAL, WRITTEN OR OTHERWISE.



Sean M. O'Meara, DPM

12/6/07
Date

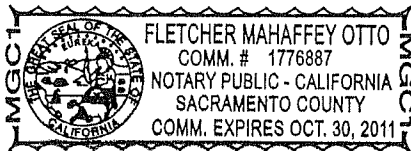
IN THE STATE OF CALIFORNIA §

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COUNTY OF SACRAMENTO §

BEFORE ME, on this day personally appeared Sean Matthew O'Meara known to me, who first, being duly sworn, signed the foregoing **Agreed Order** in my presence.

SIGNED on this the 11th day of DECEMBER, 2007.



FLETCHER MAHAFFEY OTTO, NOTARY PUBLIC
(Printed Name of Notary Public)

[Signature]
Notary Public, in and for the State of California

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 11th day of December, 2007, after a Board vote at its September 8, 2007 regularly scheduled Board Meeting after reviewing this entire matter, granted by vote the pre-authorization of the Board President and Executive Director to execute this Order to be immediately effective upon their signature.

[Signature]
Ms. Doris Couch
Board President

[Signature]
Hemant Makan
Executive Director